IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13512 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAKUNTALABEN ALIAS SHAKUBEN RAJNIKANT PATIL

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 13512 of 2003

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MR SS PATEL, AGP, for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 27/11/2003

ORAL JUDGEMENT

1. Commissioner of Police, Surat City, Surat, passed an order on the 29th August, 2003 in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner under the provisions of the said Act.

2. The detaining authority took into consideration

three prohibition cases registered against the petitioner, so also the statements of two anonymous witnesses recorded on the 17th August, 2003 and verified on the 18th and the 19th August, 2003. The detaining authority considered the activities of the detenu as that of a bootlegger as defined under the PASA Act and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. The petitioner challenges the order of detention on various grounds. Learned advocate, Mr. Kamlesh Kachhavah, appearing for the petitioner submitted that the petition deserves to be allowed only on the ground of delay in passing the order. After verification of the statements on the 18th and the 19th August, 2003, the order is passed on the 29th August, 2003. He submitted that the satisfaction recorded by the detaining authority for urgent need of detaining the detenu cannot be said to be genuine. He, therefore, submitted that the petition may be allowed.

4. Mr. Patel, learned Assistant Government Pleader, has opposed this petition.

5. It is clear, on perusal of the record that the statements of anonymous witnesses were recorded on September 17th August, 2003. The said statements were verified by the detaining authority on the 18th and the 19th August, 2003 and the order was passed on the 29th August, 2003. Even if the date of verification is considered, the order is passed after a lapse of about 10 days. This unexplained lapse/delay in passing the order will have a direct bearing on the genuineness of the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under the PASA Act. The authority has observed in the grounds of detention that the petitioner is required to be detained under the PASA Act for immediately preventing him from pursuing his activities which are detrimental to public order. The outcome is that the order is passed on a subjective satisfaction which cannot be said to be genuine, but only verbal. If the satisfaction was genuine, there would not have been so much of delay in passing the order and in absence of any explanation coming from the detaining authority by way of an affidavit or otherwise, no concession can be given for the delay. The delay has vitiated the order of detention

and, therefore, the petition deserves to be allowed.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated the 29th August, 2003, passed against the detenu is hereby quashed. The detenu-Shakuntalaben alias Shakuben Rajnikant Patil, ordered to be released forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

7. Direct service is permitted.

[A.L. DAVE, J.]

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